

REMARKS

This patent application presently includes Claims 1-19, all of which stand rejected.

The Examiner has maintained obviousness rejections based on Steinwand or Reznik in view of GB 1,004,522 and GB Patent No. 1,228,175 and Hsieh et al. These rejection are respectfully traversed. None of these references, nor any combination thereof renders the present claims obvious.

The Examiner's obviousness rejections are based on two separate combinations of four references. The first combination is Steinwand in view of GB 1,004,522, GB 1,228,175 and Hsieh et al. The second combination is Reznik in view of GB 1,004,522, GB 1,228,175 and Hsieh et al.

As will be demonstrated below, the teachings of Steinwand and Reznik, which are fundamental to the two obviousness rejections put forward by the Examiner, teach away from the Applicants' claimed invention.

As previously submitted, it is essential to the teachings of Steinwand that the fruit be treated with a hydroxide solution so as to modify the cellulose, fibrous and starchy parts of the fruit. Specifically, Steinwand states at column 2 beginning line 2:

While I am not able to state the exact *chemical reaction* which takes place when fruit, such as grapes, are treated with hydroxide, some change has been made in the condition of the skin and body or pulp of the fruit so that sugar enters slowly, and the processing of the fruit through various increasing concentrations of sugar in water requires considerable time (emphasis added).

In the response to the last Office Action, Applicants amended the broadest independent claims of the application, namely claim 1 and claim 2, to specifically recite at step (b):

- (b) disrupting the structure of the fruit by one of a mechanical and physical process which is *free of any steps that are not physical or mechanical* to produce cracks on the surface of the fruit whilst maintaining integrity thereof (emphasis added);

In the latest Office Action, the Examiner asserts that claim 1, particularly step (b) of claim 1, does not exclude a hydroxide treatment step, which step is essential to the teaching of Steinwand.

It is respectfully submitted the Examiner's interpretation of both Steinwand in relation to its hydroxide treatment step (and the plain language of claim 1 at step (b)) are incorrect and have no support in the record.

Applicants do not understand how the Examiner could possibly comprehend claim 1 as incorporating a hydroxide treatment step (*clearly chemical*), or as reading on a process as set out in Steinwand, utilizing a hydroxide treatment step (*clearly chemical*).

In accordance with claim 1 of the Applicants' invention, dried fruit having a moisture content between 5 to 40% (step (a) of claim 1) is subject to disruption of the structure of the fruit by *one of a mechanical and physical process which is free of any steps that are not physical or mechanical* to produce cracks on the surface of the fruit while maintaining its integrity ((step (b)). Clearly, the claim language does not admit any

hydroxide treatment step, and indeed specifically excludes the use of a hydroxide treatment step as described in Steinwand.

As previously demonstrated (in an earlier amendment), Steinwand teaches that both a hydroxide treatment and puncturing of the surface of the fruit must be carried out – see Steinwand at page 3, column 1, lines 46-60.

Thus, there can be no doubt that Steinwand teaches away from the present invention; and under no circumstances would it lead one to arrive at the claimed invention, either taken alone or in combination with the GB patents and the Hsieh reference. Further, as previously submitted the additional prior art references are themselves incompatible with the teachings of Steinwand.

Turning to the Examiner's second obviousness rejection based on Reznik in combination with the two GB patents and Hsieh, it is respectfully submitted that the Examiner has mischaracterized the teachings of Reznik. Reznik teaches away from the Applicants' invention as claimed. Reznik is concerned with the provision of novel apparatus and processes for hydrating dates. Reznik fissures the skin of dates to enable air to be drawn rapidly out of the fruit, thereby allowing ready vacuum impregnation with water. Specifically, Reznik states at column 2 beginning line 25 through 33:

One phase of the invention concerns the procedure used to increase the moisture content of the dates. This involves a vacuum treatment conducted, as noted above, at ambient temperature. Another phase of the invention concerns apparatus and process for pretreatment of the dates to enable them to be effectively hydrated. Basically, this involves a fissuring of the skin of the dates.

Applicants submit that the vacuum impregnation of water into fruit according to Reznik is a completely different process from that claimed in the Applicants' invention. Applicants additionally refer to the declaration of Dr Reid, previously filed in connection with this application, which explains the differences between the process described by Reznik and that claimed by the Applicants. The examiner is either not giving adequate consideration to this expert testimony or substituting her opinion for expert testimony. Either situation would be a gross error. Ultimately, the only real evidence in the record is contrary to the examiner's conclusion.

At page 4 of the last Office Action, the Examiner states "Applicants argue that the Reznik patent uses a vacuum to draw water into the dates and that this is not needed to this invention. However, the claims do not exclude this limitation".

It is respectfully submitted the Examiner has failed to recognize that step (c) of claim 1 specifically recites that a fruit is reacted with a solute solution containing one or more water activity controlling solutes "for a time sufficient to allow solute infusion into the fruit". Applicants submit that it is a matter of basic scientific fact that infusion is a very different process from vacuum impregnation as taught in Reznik.

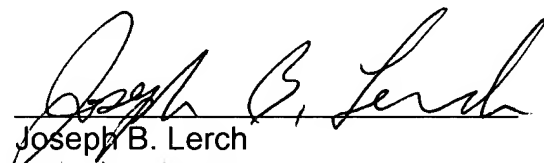
If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Thus there is no *prima facie* obviousness in the present instance as a matter of law.

Reznik, like Steinwand, as whole teaches, away from the presently claimed process, and thus the invention as claimed is not obvious over Reznik. For the same reasons, the invention as claimed is not obvious over Reznik in combination with the GB patents and Hsieh.

In conclusion, the claim language clearly excludes the teachings of the primary references relied upon by the Examiner, namely Steinwand and Reznik, and further these references clearly teach away from the Applicants' invention as claimed. Moreover, the additional references relied on by the Examiner are incompatible with the teachings of Reznik and Steinwand, and do not modify the fact that Reznik and Steinwand teach away from the Applicants' claimed invention.

For the foregoing reasons, all of the claim rejections are improper, should be withdrawn, and all of the claims should be allowed as presently constituted.

Respectfully submitted,



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